

**HIGH COURT OF CHHATTISGARH, BILASPUR****WPC No. 672 of 2021**

- Real Estate Regulatory Authority Chhattisgarh, An Authority Established Under Section 20 Of The Real Estate (Regulation And Development) Act, 2016 By State Government Of Chhattisgarh, Through Its Authorized Signatory.

**---- Petitioner****Versus**

1. Real Estate Appellate Tribunal A Tribunal Established Under Section 43 Of The Real Estate (Regulation And Development) Act, 2016 Situated At Ghadi Chowk, Raipur , Through Its Presiding Officer
2. Shri Satyanarayan Agrawal S/o Late Shri Ram Gopal Agrawal R/o E 31, 32, Anandam World City, Kachna, Raipur Chhattisgarh
3. Smt. Sharda Devi Agrawal W/o Shri Satyanarayan Agrawal R/o E-33, Anandam World City, Kachna, Raipur Chhattisgarh
4. Shri Sumit Agrawal S/o Late Shri Ramesh Agrawal R/o E-17, E-32, Anandam World City, Kachna , Raipur Chhattisgarh
5. Shri Atul Agrawal S/o Shri Satyanarayan Agrawal R/o E-20, Anandam World City, Kachna , Raipur Chhattisgarh
6. Shri Satyanarayan Agrawal R/o E-19, Anandam World City, Kachna , Raipur Chhattisgarh
7. Shri Ateet Agrawal S/o Shri Shri Satyanarayan Agrawal R/o E-18, Anandam World City, Kachna , Raipur Chhattisgarh
8. M/s Gold Bricks Infrastructure Pvt. Ltd. Having Its Registered Office At Anandam World City, Gad Colony, Kachna Main Road, Raipur Chhattisgarh Through Its Directors Rakesh Saraogi, Rajesh Saraogi Sivasagarnemchand

**---- Respondents**

---

For Petitioner : Ms. Meha Kumar, Advocate

For Respondents No.1, 2 & 4 to 7 : Shri Shreyankar Nandy, Advocate

For Respondent No.3 : Shri Manoj Paranjpe, Advocate

---

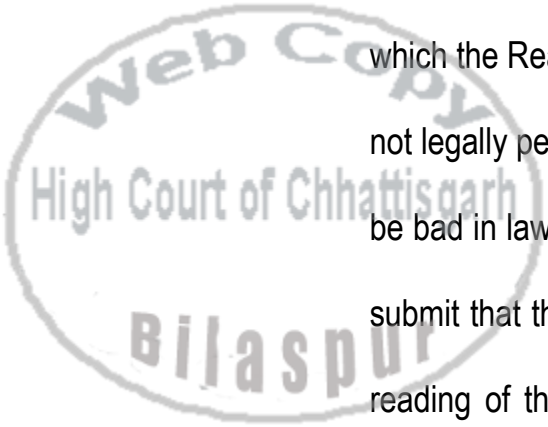


**Hon'ble Shri Justice Goutam Bhaduri**

**Order**

**24/03/2021**

1. Heard.
2. Challenge in this petition is to the order dated 08.12.2020 (Annexure P-1) passed by the appellate Tribunal constituted under the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as 'the Act, 2016').
3. Learned counsel for the petitioner would submit that the appellate authority in its appellate order dated 08.12.2020 at para 33 has given certain directions which the Real Estate Regulatory Authority (hereinafter referred to as 'RERA') is not legally permissible to do so or is entitled to do so, therefore, the order would be bad in law and the said part of the direction is bad in law. She would further submit that the power under Act, 2016 is conferred under Section 31 & 71 and reading of the same would show that it is the adjudicating authority who will decide with respect to compensation. Consequently, the adjudicating authority which is to be appointed under Section 71 of the Act, 2016 is the authority, who is the petitioner herein, cannot be directed to do so as it would be completely illegal and the said direction cannot be allowed to sustain. She further refers to Section 35 of the Act, 2016 and would submit that Section 35 of the Act, 2016 also do not anywhere gives the power to delegate, which has been done in the instant case, wherein the direction has been given. She would further submit that she has not challenged the entire order only the part of the order given at para 33 has been challenged.

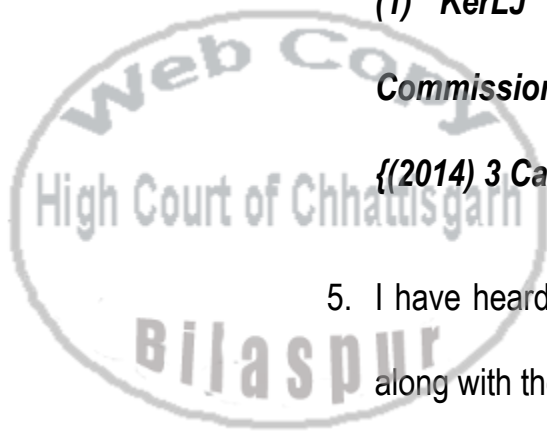




4. Per contra, learned counsel for the respondents oppose the arguments and would submit that the very purpose of filing of this petition would be against the judicial dictum as the authority which has filed the petition against the order of the appellate authority cannot be allowed to be a party as the authority was discharging its quasi judicial functioning. He would further submit that the RERA i.e. the petitioner herein, cannot step into the shoes of the parties either as complainant or respondent instead of adjudicating the same. Reference is made to the law laid down by the Kerala High Court in the case of ***Assistant Provident Fund Commissioner Vs. West Coast Petroleum Agency*** {2012 (1) KerLJ 738} as also in the case of ***Regional Provident Fund Commissioner Vs. Employees Provident Funds Appellate Tribunal & Anr.*** {(2014) 3 Cal LJ 1}.

5. I have heard learned counsel for the parties and perused the documents filed along with the petition.

6. The petitioner herein is the RERA, which is constituted under the Act of 2016. The challenge has been made to the order passed by the appellate authority under the Act, 2016 dated 08.12.2020 (Annexure P-1). Reading of the order would disclose the facts that certain buyers had made a complaint before the RERA that the developer respondent No.8 Ms. Gold Bricks Infrastructure Pvt. Ltd. had demanded Rs.200/- per sq. feet for development of the plot as one time payment. It was further stated that though the permission granted by the Town and Country Planning dated 03.09.2009 do not empower/authorize the developer to collect or demand such amount and otherwise permission





contemplates that the developer would develop the colony on its own expenses. Further the demand was made for supply of water and the maintenance and certain amount was paid, however, the additional amount which was paid, the developer has not returned on the contrary additional amount was called for. The complaint further contemplates that according to the published brochure there would exist a garden and the garden would have a 30 KM walkway, apart from it the colony would include fire extinguisher, 70% open land, temple, pond, developed open garden and other commercial activities, health care facilities like hospital, amphitheater etc. were to be given, however, the same were not developed. It is further contended that the video was displayed in the website to show existence of two big club houses, ponds, swimming pool, temple, broad road, boating etc., however, nothing of such amenities were given, thereby wrong information was given. It was further contended that even after sale of 102 plots out of 126 residential society has not been constituted. On the various grounds the complaint was made before the RERA.

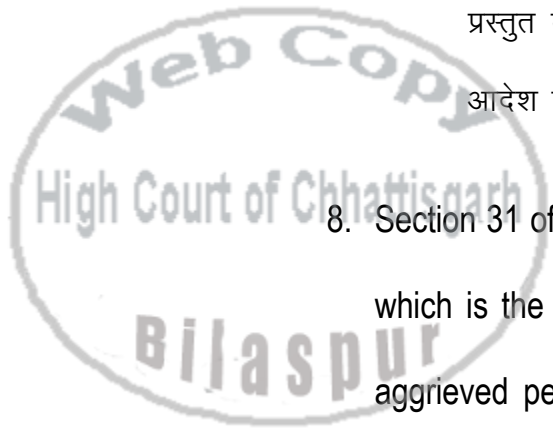
7. The developer in his reply refuted all the averments of claim. Eventually by an order dated 10.02.2020 all the petition preferred before the RERA were dismissed. Being aggrieved by the said order, the purchasers, the beneficiaries filed an appeal before the appellate authority/RERA, wherein the appellate authority passed an order with certain directions. The RERA is aggrieved by the direction contained in para 33 of the order which is reproduced hereinunder:-



क्र० M-PRO-2019-00678, प्रकरण क्र० M-PRO-2019-00677, प्रकरण क्र० M-PRO-2019-00681, प्रकरण क्र० M-PRO-2019-00679 प्रत्यावर्तित करते हुए छत्तीसगढ़ भू-संपदा विनियामक प्राधिकरण, रायपुर को आदेशित किया जाता है कि वे प्राधिकरण, के द्वारा नियुक्त आर्किटेक्ट अथवा उभय पक्ष की सहमति से प्रस्तावित किये गये किसी आर्किटेक्ट को नियमानुसार नियुक्त कर स्थल निरीक्षण करवाकर उनसे प्राप्त विस्तृत रिपोर्ट एवं तत्पश्चात उभय पक्ष को सुनवाई एवं साक्ष्य प्रस्तुत करने का अवसर प्रदान करते हुए कालोनी के विकास से संबंधित अपीलार्थीगण की शिकायत तथा उभय पक्ष के मध्य आपसी सहमति से अधोसंरचना विकास अनुबंध निष्पादित नहीं होने से संबंधित शुल्क एवं अन्य शुल्कों से संबंधित शिकायत का निर्धारण न्याय निर्णायक अधिकारी के माध्यम से उभय पक्ष को सुनवाई एवं साक्ष्य प्रस्तुत करने का अवसर प्रदान करते हुए सभी प्रकरणों में नये सिरे से विधि अनुसार आदेश पारित करें।

8. Section 31 of the Act, 2016 speaks about filing of complaints with the Authority, which is the petitioner herein or the adjudicating officer. It purports that any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be.

9. Section 35 of the Act, 2016 purports that when the authority considers it expedient may call for any promoter or allottee or real estate agent, as the case may be, at any time to furnish in writing such information or explanation relating to its affairs as the Authority may require and appoint one or more persons to make an inquiry in relation to the affairs of any promoter or allottee or the real estate agent, as the case may be. Sub-section (2) gives the power to the





authority certain power of the Civil Court under the Code of Civil Procedure, 1908. For the Sake of brevity Section 35 is reproduced herein below:-

**35. Powers of Authority to call for information, conduct investigations.-**

(1) Where the Authority considers it expedient to do so, on a complaint or *suo motu*, relating to this Act or the rules [or] regulations made thereunder, it may, by order in writing and recording reasons therefor call upon any promoter or allottee or real estate agent, as the case may be, at any time to furnish in writing such information or explanation relating to its affairs as the Authority may require and appoint one or more persons to make an inquiry in relation to the affairs of any promoter or allottee or the real estate agent, as the case may be.

(2) Notwithstanding anything contained in any other law for the time being in force, while exercising the powers under sub-section (1) the Authority shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:-

- (i) the discovery and production of books of account and other documents, at such place and at such time as may be specified by the Authority.
- (ii) summoning and enforcing the attendance of persons and examining them on oath;
- (iii) issuing commissions for the examination of witnesses or documents;
- (iv) any other matter which may be prescribed.





10. Section 71 of the Act 2016 purports that for the purpose of adjudging compensation under sections 12, 14, 18 & section 19, the Authority shall appoint in consultation with the appropriate government one or more judicial officer as deemed necessary, for holding an enquiry.

11. In the instant case, the RERA authority is aggrieved by the direction given at Para 33 of the order which is reproduced above. Reading of Para 33 would show that the appellate authority directed RERA to appoint an architect to evaluate the factual aspect or an architect may be appointed with the consent of both the parties and further directed the spot be inspected. Thereafter after receiving the report, both the parties should be given opportunity of hearing and opportunity to produce evidence and the applications with respect to the proposed development projected for the colony be evaluated with existing reality. Further in respect of the agreement which were not executed, it was directed the leviabale charges and other ancillary charges may be adjudicated with the charge of adjudicatory authority after giving all the parties an opportunity of hearing.

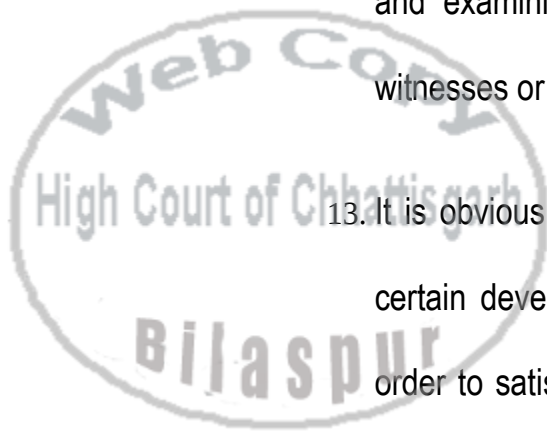
12. Section 31 and Section 35 of the Act, 2016, when are read together it appears that it gives the power to the authority to adjudicate the complaint for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be. If certain promises were made in the brochure and in the website it was shown that certain amenities would be made available by the promoter/builder and if it has not been provided, then in such case beneficiary





can always make a complaint to the authority and if there is a violation committed against the promise, then it would amount to be within the ambit of Section 31 (2) of the Act, 2016. Further more, Section 35 of the Act, 2016 has made it clear that the authority may ask for such information or explanation from the promoter or allottee or the real estate agent, as the case may be in relation to the affairs of any promoter or allottee or the real estate agent. For this purpose the powers of civil Court for discovery and production of books of account and other documents, at such place and at such time as may be specified by the Authority, summoning and enforcing the attendance of persons and examining them on oath, issuing commissions for the examination of witnesses or documents are included.

13. It is obvious that when the beneficiary comes to RERA with a complaint that certain development have not been made according to the brochure then in order to satisfy the fact whether such developments have been carried out or not physical inspection is required as the facts would speak for itself. If the complainants complaint that household would be provided with certain specification like fitting and fixtures or any particular degree of amenities or particular amenities in the colony then this can only be ascertained by the expert who deals with subject in the field for which the RERA was authorized to get it done by such expert. The complaint in this case would show that the beneficiaries came to RERA with a cry that certain developments which were promised have not been carried out. The developments which were reflected in the brochure and advertised in the website were completely contrary to the actual existing facts and the ground reality is different. The RERA though was







authorized to examine the same but failed to do so in exercise of powers under the Act, 2016. Consequently, the beneficiaries went up in the appeal and the appellate Court in order to ascertain the actual ground reality of the development which is carried out by the developer as against the promise made directed the architect to evaluate the facts. This part of the order pinches the RERA. This Court is unable to understand how the RERA has come up in the petition stepped into the shoes of a litigant to hold the brief of the developer.

14. The Supreme Court in the case of ***Mothesham Mohammad Ismail Vs. SPL.***

***Director Enforcement Directorate and others {2007 (8) SCC 254}*** has held

that the adjudicating authority exercises a quasi-judicial power and discharges judicial functions. When its order has been set aside by the Board, ordinarily in

absence of any power to prefer an appeal, it could not do so. RERA, which is

the petitioner in this case, is appointed under the Act, 2016. The object of this

Act is to standardize business practices and transactions in the real estate

sector also to ensure consumer protection. The Bill establishes Real Estate

Regulatory Authority at state level to be approached for redressal of grievances

against any builder. It will regulate transaction related to both residential and

commercial projects and ensure their timely completion and handover. The bill

also makes it obligatory for developers to post all information on issues such as

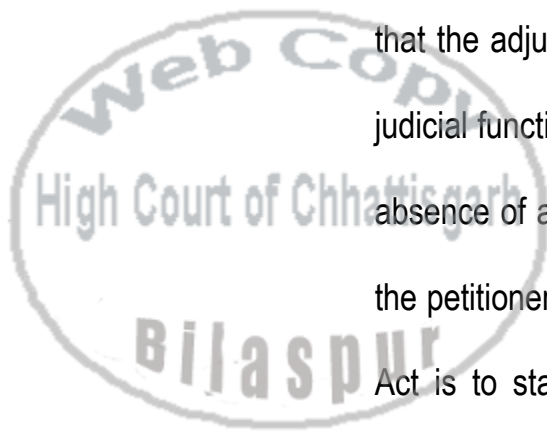
project plan, layout, government approvals, land title status, sub-contractors to

the project and completion schedule with RERA and then in effect pass this

information on to the consumers. It also states that the real estate sector plays

a catalytic role in fulfilling the need and demand for housing and infrastructure

in the country. Therefore, the object of the Act, 2016 was not for the litigation



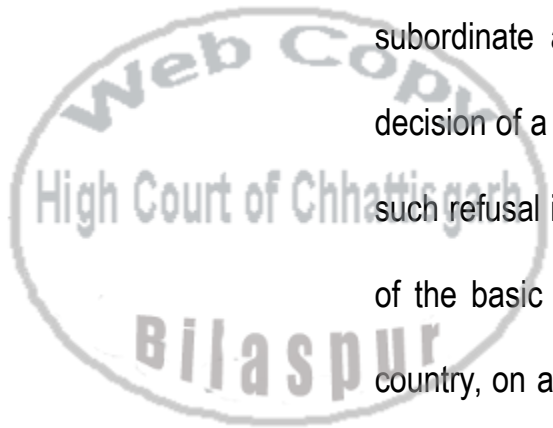


to the RERA but it was for the benefit of the consumers and also regulate the builder that he has to abide by the norms.

15. The Kerala High Court in the case of ***Assistant Provident Fund Commissioner Vs. West Coast Petroleum Agency {2012 (1) KerLJ 738}*** has held that when the authorities are acting as a quasi-judicial authority, they cannot be permitted to act as parties, whatever be the sequence of events. Having fulfilled one role, the other role should not be available. It reiterated the law laid down in the case of ***Bhopal Sugar Industries Vs. Income Tax Officer, 1961 AIR(SC) 182*** wherein the Supreme Court held that when a subordinate authority in the hierarchy does not adhere to, or abide by the decision of a superior authority, its action cannot be justified. It further held that such refusal is in effect a denial of justice and is furthermore destructive of one of the basic principles in the administration of justice, based as it is, in this country, on a hierarchy of Courts. It further followed the principle laid down in the case of *Cassel Vs. Broome, 1972 AC 1027*, wherein it was observed that it is inevitable in a hierarchal system of Courts that there are decisions of the Supreme Appellate Tribunal which does not attract unanimous approval. The judicial system works only if some one is allowed to have the last word.

Likewise the Calcutta High Court in the case of ***Regional Provident Fund Commissioner Vs. Employees Provident Funds Appellate Tribunal {2014 (3) CalLJ 1}*** has laid down in the similar direction.

16. In view of such decisions, the direction given in para 33 of the order dated 08.12.2020 when are examined, the appellate authority has directed for





appointment of an architect either by the RERA or with the consent of both the developer or the consumer so as to evaluate the facts ground reality which is existing. Naturally it would include that if the brochure and the development which is carried out are falling apart then this difference or gap of project can only be ascertained by the architect. Furthermore, the direction that with the consent of the parties the adjudicatory authority may be appointed and they may also be given the opportunity of hearing before finding is arrived at. The direction given in para 33 appears to be completely justified and legal.

17. In view of the above discussion, the petition sans merit it is dismissed.



Sd/-

Goutam Bhaduri  
Judge